

1 Teresa M. Corbin (SBN 132360)
Christopher Kelley (SBN 166608)
2 Thomas C. Mavrakakis (SBN 177927)
Erik K. Moller (SBN 147674)
3 HOWREY SIMON ARNOLD & WHITE, LLP
301 Ravenswood Avenue
4 Menlo Park, California 94025
Telephone: (650) 463-8100
5 Facsimile: (650) 463-8400
6 Attorneys for Plaintiff SYNOPSYS, INC.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 SYNOPSYS, INC.,

13 Plaintiff,

14 vs.

15 RICOH COMPANY, LTD.,

16 Defendant.

) Case No. C03-02289 MJJ

)

) **SYNOPSYS' OPPOSITION TO RICOH'S**
) **MOTION FOR ENTRY OF PROTECTIVE**
) **ORDER AND CROSS-MOTION FOR**
) **ADOPTION OF SYNOPSYS' PROTECTIVE**
) **ORDER AND DISCOVERY PROCEDURES**

)

) Date: February 10, 2004

) Time: 9:30 a.m.

) Courtroom: 11

1 **I. INTRODUCTION**

2 The parties to this dispute have both proposed alternative arrangements under which the source
3 code for Synopsys' Design Compiler™ product would be available to Ricoh's counsel. Ricoh
4 proposes that Synopsys be compelled to turn over the entirety of its source code in electronic form, and
5 Ricoh will commit to keep this source code in a locked room at its counsel's office. Synopsys is
6 extremely concerned about such an arrangement because it would expose a complete copy of its source
7 code in an environment with security protections that are significantly lower than those that Synopsys
8 imposes at its own facilities. As a compromise, Synopsys has proposed that it make a complete
9 electronic copy of its code available for Ricoh's review on a non-networked computer in a closed
10 office reserved for the use of Ricoh's counsel at one of Synopsys' facilities. Ricoh's counsel would be
11 able to use this machine to identify those portions of the source code that it believed were relevant to
12 its infringement analysis. Paper copies of those sections of code would then be produced to Ricoh's
13 counsel. Synopsys' compromise provides Synopsys with the assurance that the entirety of its source
14 code will never leave the perimeter of a Synopsys facility. At the same time, the compromise allows
15 Ricoh's counsel to work with the relevant portions of the source code from the convenience of their
16 office.

17 Synopsys vigorously opposes Ricoh's code discovery proposal because it would require
18 Synopsys to surrender control over a complete copy of the source code for its most important product
19 to Ricoh, an adverse party. As described in the accompanying declaration of Mr. Van Nguyen,
20 Synopsys employees go to great effort and Synopsys spends significant sums of money to ensure that
21 complete copies of its source code do not leave the tightly controlled environment of its computer
22 network. The reason for this is simple: Synopsys' business is built entirely on the trade secrets
23 contained in its software. As described in the accompanying declaration of Mr. Gal Hasson, if the
24 source code, and the algorithms that it contains, found their way into the public domain or into the
25 hands of Synopsys' competitors, the resultant damage to Synopsys' business would be incalculable.
26 *See* Declaration of Gal Hasson at ¶ 5 ("Hasson Decl."). For this reason, Synopsys has not previously
27 allowed complete copies of its source code to leave the confines of its computer network or the
28 physical premises of its facilities. *See* Declaration of Van Nguyen at ¶ 2 ("Nguyen Decl."). Under

1 Synopsys' compromise proposal, the risk to Synopsys is greatly reduced, since only specific portions
2 of the code will leave the confines of Synopsys. At the same time, Ricoh's counsel is afforded
3 unhindered access to the subset of the code that Ricoh hopes will be relevant to their infringement
4 allegations.

5 Ricoh identifies two rationales for opposing Synopsys' proposed compromise, but neither
6 rationale has any real substance that would weigh against Synopsys' interest in preserving the integrity
7 of its most important trade secrets. The first "injury" identified by Ricoh is trivial: because Synopsys
8 will provide copies of the relevant sections of code identified by Ricoh, Synopsys will know what
9 sections of code Ricoh believes are relevant to its infringement analysis. This is no injury at all. Since
10 Ricoh is required under the Local Patent Rules to identify "specifically where each element of each
11 asserted claim is found within each Accused Instrumentality," N.D. Cal. Patent Rule 3-1(c), it would
12 be improper for Ricoh to attempt to conceal this information. *See also* N.D. Cal. Patent Rule 3-6. The
13 second "injury" identified by Ricoh is fantastic, verging on the paranoid. Ricoh proposes that
14 Synopsys will secretly network the computer that it provides to Ricoh and monitor the keystrokes
15 made by Ricoh's counsel so as to gain some insight into their thought process. *See* Motion for
16 Approval of Protective Order at 5:12-13 ("Motion") ("With the networked system, Synopsys can watch
17 as Ricoh works – Synopsys will be able to see what Ricoh sees.") Alternatively, Ricoh alleges,
18 Synopsys will capture this "keystroke information" after Ricoh is finished using the computer. *See id.*
19 at 5:13-17 (using an "audit trail ... Synopsys may be able to reconstruct the work done by Ricoh and
20 obtain information that should be protected by the work product privilege.").

21 The conditions imposed on production of Synopsys' source code should be based on a realistic
22 assessment of risks, not flights of fancy. Synopsys' is proposing providing Ricoh access to its code in
23 Synopsys' Secure User Research Facility (SURF). *See* Exhibit A to Declaration of Erik K. Moller in
24 Support of Opposition to Motion to for Approval of Protective Order and Cross-Motion for Adoption
25 of Synopsys' Protective Order ("Moller Decl.")¹. The SURF facility was designed expressly for the
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28 ¹ All exhibits are attached to the Moller Decl. unless otherwise indicated.

1 purpose of providing a secure working environment in which Synopsys' business competitors and even
2 potential legal adversaries such as the Internal Revenue Service can conduct their own private and
3 unsupervised review of Synopsys' confidential materials. The SURF is designed specifically to
4 address Ricoh's concerns: the computers are not networked and each user has a physically secure
5 portion of the SURF facility. *See* Exhibits A and C. If Synopsys' competitors and the IRS regard
6 SURF as sufficiently secure to use – and they do – there is no reason to suppose the SURF facility is
7 not adequate for Ricoh. Ricoh's technical concerns regarding keyboard "audit trails" can be addressed
8 by technical solutions.

9 Ricoh's discovery proposal, on the other hand, requires Synopsys to rely on the physical
10 protection of a locked door in a building over which Synopsys has no control. Synopsys has never
11 previously regarded a door lock as sufficient to protect its source code and Ricoh's brief offers no
12 compelling reason why it should be forced to do so now. Synopsys, therefore, requests that the Court
13 deny Ricoh's proposed protective order terms and adopt the procedures and protective order proposed
14 by Synopsys.

15 **II. FACTS**

16 Ricoh has alleged that certain uses of Synopsys' Design Compiler™ software infringe Ricoh's
17 U.S. patent number 4,922,432 (the "432 patent"). Design Compiler is one of the earliest products
18 developed by Synopsys and remains one of its most important products. *See* Hasson Decl. at ¶¶ 3-4.
19 Design Compiler is part of a class of tools known as logic synthesis software. Logic synthesis
20 software translates a more abstract, or higher level, register transfer level ("RTL") description of a
21 semiconductor circuit, into a detailed "netlist" that describes, using circuit cells from a library of cells
22 provided by a semiconductor foundry, how to build the circuit described at the higher level. *See id.*
23 Design Compiler is the preeminent logic synthesis offered on the market today. *See id.* It is the
24 principal contributor to revenues from Synopsys' "Design Implementation" line of products, which
25 accounts for between 40 and 50 percent of Synopsys' total revenues. *See id.* at ¶ 5.

26 Design Compiler has achieved widespread commercial adoption because of the high quality of
27 the transformations from RTL to final netlist that Design Compiler is able to produce. *See id.* at ¶ 4.
28 This ability to do high quality transformations is a result of the proprietary algorithms that Synopsys

1 has developed and improved over the approximately fifteen-year period that Synopsys has been
2 designing and improving the Design Compiler software. *See id.* Synopsys regards the algorithms used
3 in Design Compiler, and the source code for this product, as trade secrets and goes to considerable
4 effort to secure these trade secrets against disclosure. *See* Nguyen Decl. at ¶¶ 2-6. As a policy,
5 Synopsys aims to confine the source code for Design Compiler within its secure computer network,
6 and the confines of its physical plant. *See id.* at ¶ 2. In order to achieve this goal, Synopsys has
7 implemented a computer network with multiple layers of protection against unauthorized access to the
8 servers on which the source code reside. *See id.* at ¶¶ 3-6.

9 Synopsys' desire to minimize the risk of unauthorized disclosure of its trade secrets prompted it
10 to construct the Secure User Research Facility (SURF) at its headquarters in Mountain View. At
11 SURF, third parties are provided with a temporary right of exclusive access to individual rooms within
12 the confines of Synopsys' facility. *See* Exhibit A. At the SURF facility, Synopsys can give authorized
13 persons access to Synopsys' confidential or trade secret information in private facilities for review, but
14 assures Synopsys that its trade secrets will not leave the confines of Synopsys' facilities.

15 Synopsys originally proposed to give Ricoh access to the source code for its Design Compiler
16 product at its SURF facility. *See* Exhibit B. Under this proposal, Synopsys would provide Ricoh with
17 a SURF room containing a non-networked computer with a complete copy of the Design Compiler
18 source code. Ricoh would be permitted to identify those portions of the source code that it deemed
19 relevant to its infringement allegations and Synopsys would then produce hard copies of those code
20 elements. The hard copy code would be marked as requiring the highest level of protection under the
21 protective order, but Ricoh would be able to use it as it would any other highly confidential document
22 produced by Synopsys.

23 Ricoh objected to the SURF proposal because the facility was located in California, at some
24 distance from the offices of Ricoh's counsel in Washington, D.C. Wishing to accommodate Ricoh,
25 Synopsys then proposed to make a SURF-like room available at a Synopsys facility in Bethesda,
26 Maryland. *See* Exhibit C. Ricoh has rejected this proposal as well.

III. ARGUMENT

A. The Court Has Authority to Issue Appropriate Protective Orders

The Federal Rules authorize the Court to craft discovery procedures and orders to prevent disclosure of trade secrets and other confidential research, development or commercial information or to control the manner in which such material is revealed. Fed. R. Civ. P. 26(c)(7). If a party seeking protection from the Court can establish that the information that it is being asked to produce is a trade secret, the burden then shifts to the party seeking discovery to demonstrate that the information is relevant to its claims or defenses and that discovery is necessary. *See In Re Remington Arms Company, Inc.*, 952 F.2d 1029, 1033 (8th Cir. 1991); W. SCHWARZER, A. TASHIMA & J. WAGSTAFFE, FEDERAL CIVIL PROCEDURE BEFORE TRIAL at §§11:1110, et seq. If each party can make its showing, the court must balance the competing interests in determining what production will be required and what conditions will be imposed on that production. *See Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992).

Broad discretion is given to the district courts to decide what degree of protection is required. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984); *see also Phillips v. General Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002). The *Remington Arms* decision identifies several requirements that a district court may impose to protect trade secrets, including limiting reproduction of the protected information, limiting the individuals who may have access to the protected information, and requiring the party seeking disclosure to post a bond against disclosure. *See Remington Arms*, 952 F.2d at 1033. Other decisions impose restrictions on the manner in which trade secrets are made available for production in order to minimize the risk of unauthorized disclosure. *See Hartman v. Remington Arms Co., Inc.*, 143 F.R.D. 673, 690-691 (W.D. Mo. 1992) (documents maintained at producing party's counsel's offices); *Dynamic Microprocessor Assoc. v. EKD Computer Sales*, 919 F.Supp. 101, 106 (E.D.N.Y. 1996) (prohibiting reproduction of source code); *Adobe Systems v. Macromedia*, 2001 U.S. Dist. LEXIS 18630, at *2 (source code must be produced in paper, rather than electronic, format).

B. Ricoh's Proposed Protective Order Does Not Adequately Protect Synopsys' Trade Secrets.

Ricoh's proposed protective order requires Synopsys to accept a much lower level of protection for its source code than Synopsys has ever previously tolerated. At its own facilities, Synopsys protects its code with multiple levels of security. *See* Nguyen Decl. at ¶¶ 3-6. Ricoh proposes nothing more sophisticated than a door lock to protect Synopsys' source code. Furthermore, Ricoh provides no substantive justification for why Ricoh's counsel requires a complete copy of Synopsys' source code at its own facilities and why, therefore, Synopsys should be forced to bear any risk of malicious disclosure of its code. Synopsys has demonstrated the importance of its source code trade secrets by the extensive steps that it has taken over the past years to protect this code. *See Ruckelshaus v. Monsanto*, 467 U.S. 986, 1002 (1984) (the scope of a trade secret is defined by the extent to which the owner protects the secret from disclosure to others). The protective order for this case must, therefore, safeguard Synopsys' property interest in its trade secrets. *See Remington Arms*, 952 F.2d at 1033.

The fact that Ricoh's counsel may be "officers of the court," see Motion at 6:4-5, does not confer any guarantee that Synopsys' code will be secure in their office building. Many other people pass through the offices of Ricoh's counsel and have access to the building at 2101 L Street in Washington D.C. which Ricoh's counsel shares with other businesses, and most of these people are not directly subject to the jurisdiction of this Court. Synopsys is legitimately concerned about relying on a third-party building security force, over which Synopsys has no control or authority, to protect Synopsys' trade secrets. Synopsys is also reluctant to entrust the continued commercial viability of its Design Compiler™ product so completely and wholly in the hands of people who sued its customers on a patent that Synopsys believes has no legitimate application to its products. While the risks of either a break-in or unauthorized copying by personnel working for Ricoh's counsel are difficult to quantify, the commercial injury to Synopsys were this to occur would be devastating. For this reason, Synopsys would never allow a complete copy of its source code to be protected solely by a door lock – even at its own facility. *See* Nguyen Decl. at ¶¶ 2-6. Ricoh's discovery proposal, therefore, imposes unprecedented, and unjustifiable risks.

1 The risk to Synopsys is significantly mitigated if the sections of Design Compiler source code
 2 that leave the confines of Synopsys' facilities are only those portions that are relevant to Ricoh's
 3 infringement allegations. In addition the risk is somewhat mitigated by production of the relevant
 4 sections of code on paper, rather than in electronic format. *See Adobe Systems*, 2001 U.S. Dist. LEXIS
 5 18630, at *2-*3.² Ricoh bears the burden of demonstrating that the protections that Synopsys seeks are
 6 outweighed by some discovery necessity. *See DirecTV, Inc. v. Trone*, 209 F.R.D. 455, 459-460 (C. D.
 7 Cal. 2002) (disclosure of trade secrets "will be required only when such disclosure is relevant and
 8 necessary to the prosecution or defense of a particular case" and the "burden rests upon the party
 9 seeking disclosure" to establish the need). Ricoh, however, has no need for access, outside the
 10 perimeter of a Synopsys facility, to those sections of the Design Compiler code that are irrelevant to its
 11 infringement allegations. There is, therefore, no countervailing interest weighing against Synopsys'
 12 need to protect its trade secrets, and Ricoh has failed to justify its opposition to the compromise
 13 discovery provisions proposed by Synopsys.

14 **C. Ricoh's Proposed Protective Order Does Not Adequately Protect Synopsys' Trade**
 15 **Secrets.**

16 The compromise proposed by Synopsys allows Ricoh the unfettered access that it seeks to the
 17 relevant portions of the Design Compiler™ source code and requires only that Ricoh make the "first
 18 cut" selection between those sections of code that it regards as relevant and those that it regards as
 19 irrelevant within the secure perimeter of a Synopsys facility. This compromise reflects an appropriate
 20 balance of the interests of the parties – giving Ricoh broad access to what it needs and protecting
 21 Synopsys by limiting the quantity of source code that will be removed from the confines of Synopsys'
 22 facilities. *See Brown Bag*, 960 F.2d at 1470 (protective order disputes are to be resolved with a
 23 balancing of the interests of the parties); *Oregon Health & Sci. Univ. v. Vertex Pharms., Inc.*, 2002
 24 U.S. Dist. Lexis 23299, at *7 (D. Or. 2002) ("The Ninth Circuit employs a balancing test to determine
 25

26 ² With the advent of bulk scanning and optical character recognition, it is not impossible to convert
 27 paper copies of the source code back into an electronic format. It is, however, significantly easier to
 28 make copies of an electronic source quickly and without detection than it is to make copies of a paper
 original.

1 what special measures should be taken, weighing the risk of disclosure to competitors against the risk
2 that a protective order will impair prosecution or defense of claims.”).

3 It is appropriate to impose more restrictive discovery terms on materials that have little or no
4 relevance to the matter in dispute. In *Upjohn Co. v. Hygieia Biological Lab.*, 151 F.R.D. 355 (E.D. Ca.
5 1993), the district court balanced the discovery needs of the plaintiff with the defendant’s need to
6 protect its trade secrets by narrowing the scope of the requested discovery to include only those
7 materials most directly relevant to the plaintiff’s allegations. *See id.* at 360-361. The Synopsis
8 proposal is even less restrictive since it allows Ricoh to make the assessment as to what types of
9 documents it believes are most relevant to its cause.

10 Ricoh alleges that it will be harmed because, under Synopsis’ proposal, Synopsis will know
11 what sections of the Design Compiler code Ricoh has identified for production in hardcopy. *See*
12 Motion at 5:17-20. Ricoh’s desire to conceal the basis of its infringement allegations is not only
13 unseemly, but is incompatible with the Northern District’s Local Patent Rules, which oblige Ricoh to
14 spell out its infringement allegations in detail. *See* Patent L.R. 3-1(c) and 3-6. Ricoh suffers no
15 “injury” in being forced to disclose which code sections it believes are relevant to its infringement
16 allegations.

17 Under traditional discovery practice without the procedures proposed by Synopsis, Ricoh
18 could not expect to make a secret of the identity of the relevant code sections. In ordinary practice,
19 Synopsis would select, and produce, copies of the code sections that it believed were relevant and
20 would seek a protective order against any request for production of source code sections not relevant to
21 Ricoh’s infringement allegations. Ricoh would be worse off under this arrangement, since it would be
22 forced either to accept Synopsis’ determination as to which code sections were relevant, or to bring a
23 motion to the Court and ask the Court to determine what was relevant and what was not. In any event,
24 Synopsis would still know under this scheme what sections of code Ricoh had available for its review.

25 Ricoh also alleges that it will be injured by Synopsis’ compromise because Ricoh’s counsel
26 (and any outside consultants) will be forced to sign in when they enter Synopsis’ facility to make the
27 “first cut” division between relevant and irrelevant code. *See* Motion at 4:21-5:2. Ricoh does not
28 explain how it will be harmed if Synopsis knows who was present for Ricoh when this separation of

code was made. There is, therefore, no reason to credit this as a legitimate objection to Synopsys' proposal. If, however, Ricoh could articulate some rational reason to believe that this information should be protected, the parties could negotiate some procedural mechanism to address this issue.

Ricoh's final objection to Synopsys compromise proposal is based on the fantastic speculation that Synopsys will spy on Ricoh's counsel when they are working at Synopsys' facility. *See* Motion at 5:6-16. The SURF facility has previously been used by organizations having an adverse relationship with Synopsys, including Synopsys' competitors and the IRS, and there is absolutely no basis for Ricoh's suggestion that Synopsys personnel would or could engage in misconduct targeted at SURF users. Nevertheless, if Ricoh was truly concerned about the possibility of spying, its concerns could be addressed by suitable protocols governing treatment of the computer provided to Ricoh.³

D. The Content of the Protective Order in the *Ricoh v. Aeroflex* Litigation Is Irrelevant.

On pages 3 and 4 of its motion, Ricoh argues, in effect, that Synopsys ought to be bound by the protective order entered in the *Ricoh v. Aeroflex* case. This contention is extraordinary not only because Synopsys was not a party to the *Ricoh v. Aeroflex* case, but also because Ricoh, which was a party, is asking the Court in its motion to adopt an amended version of that order for use in this case. *See* Motion at 2:9-19. Ricoh provides no explanation as to why it may propose amendments to the *Ricoh v. Aeroflex* order, but Synopsys may not.

Furthermore, Ricoh's assertion that "Synopsys knew, or should have known, that it would be expected to provide source code" in the *Ricoh v. Aeroflex* case, is a statement not of fact, but of Ricoh's unfulfilled wishes. In reality, Synopsys fought very hard to avoid producing source code in the *Ricoh v. Aeroflex* case, arguing that any dispute about alleged infringement of Ricoh's patent by Synopsys' Design Compiler™ product should be resolved in the present litigation. *See* Exhibits D and E. Synopsys, not Ricoh, won that argument. Synopsys, therefore, had every right to expect that any

³ Possible counter-measures that might be deployed to address this "threat" could include mechanical means such as a safe to secure the hard disk when Ricoh was not present in the room. When Ricoh completed its use of the computer the disk could be erased, in the presence of Ricoh's counsel if need be, to remove all record of their use of the machine.

1 production of its source code would be governed by the protective order in this case, in which
2 Synopsys is a direct participant.

3 **IV. CONCLUSION**

4 For all the foregoing reasons, Synopsys requests that the Court deny Ricoh's motion and
5 instruct the parties to proceed in accordance with the discovery provisions regarding production of
6 source code proposed by Synopsys.

7 Dated: January 20, 2004

Respectfully submitted,

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9 HOWREY SIMON ARNOLD & WHITE, LLP

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11 By: /s/ Christopher L. Kelley

12 Christopher L. Kelley
13 Attorneys for Plaintiff
14 Synopsys, Inc.
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